



Federal Communications Commission
Washington, D.C. 20554

March 15, 2002

DA 02-624

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael K. Kurtis, Esq.
Jerome K. Blask, Esq.
Kurtis & Associates, P.C.
1000 Potomac Street, N.W., Suite 200
Washington, DC 20007

Re: Mountain Solutions, Ltd., Inc., Emergency Motion for Stay of Auctions and Industry Analysis Division Letter Order Dated October 17, 2001

Dear Messrs. Kurtis and Blask:

This order grants in part the November 1, 2001, Emergency Motion for Stay of Auctions and Industry Analysis Division Letter Order Dated October 17, 2001 ("Stay Motion") filed by Mountain Solutions Ltd., Inc. ("Mountain Solutions").

Background. On September 11, 2001, the Commission released a memorandum opinion and order ("*MO&O*"), in which it, *inter alia*, denied Mountain Solutions' request for waiver of default payment obligations it had incurred as a result of its failure to remit the required down payment on ten licenses for which it was the successful high bidder in the first broadband Personal Communications Services ("PCS") C block auction ("Auction No. 5"). The Commission also instructed the Auctions and Industry Analysis Division ("Division") to issue an order assessing the final default payment due from Mountain Solutions with regard to the ten licenses.¹

Accordingly, in an October 17, 2001, order ("*October 17 Order*"),² we assessed Mountain Solutions a final default payment for the ten C block licenses. We ordered that Mountain Solutions' initial default payment as assessed, along with the remainder of Mountain Solutions' initial down payment for the ten C block licenses, be applied toward the sum of its final default payments for the ten C block licenses. We also ordered that Mountain Solutions' debt be paid immediately, and, if unpaid 30

¹ DiGiPH Application for Review of Public Notice DA 98-2604, *Memorandum Opinion and Order*, 16 FCC Rcd 16,538 (2001) ("*MO&O*"). The ten C block licenses for which Mountain Solutions was the high bidder in Auction No. 5 are: B053 (Bozeman, MT), B168 (Grand Junction, CO), B172 (Greeley, CO), B187 (Hays, KS), B188 (Helena, MT), B224 (Kalispell, MT), B247 (Lawrence, KS), B275 (Manhattan, KS), B366 (Pueblo, CO), and B381 (Rock Springs, WY).

² Letter order from Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Michael K. Kurtis, Esq. and Jeanne W. Stockman, Esq., Kurtis & Associates, P.C., attorneys for Mountain Solutions, Ltd., Inc., 16 FCC Rcd 18,542 (2001) ("*October 17 Order*").

days after the date of the order, that other monies that Mountain Solutions had on deposit with the Commission for an initial down payment from the second C block auction ("Auction No. 10") be applied toward the final default payments for the ten licenses.³

In response, Mountain Solutions filed the Stay Motion asking that the Commission stay enforcement of the *October 17 Order* until final resolution of a pending court appeal by Mountain Solutions⁴ of the *MO&O*.⁵ In its motion, Mountain Solutions argues that it satisfies the four-pronged test for a stay established by controlling precedent.⁶

On November 14, 2001, Mountain Solutions and the United States government entered into a standstill agreement ("*Standstill Agreement*") in which the parties agreed to preserve, for at least 60 days, the *status quo* of all matters between them. The parties subsequently extended the *Standstill Agreement* through March 15, 2002.⁷

Discussion. To the extent that the Stay Motion requests that collection of Mountain Solutions' outstanding debt of \$16,888,367.53, established in the *October 17 Order*, not be enforced, and because the pending D.C. Circuit litigation would necessarily affect the government's ability to collect on that debt,⁸ we grant Mountain Solutions' request.⁹ In all other respects the request is denied. This stay will expire without further action by the Commission upon final judicial disposition of the pending litigation.

Conclusion. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j), and only to the extent that the Stay Motion requests that collection of Mountain Solutions' outstanding debt of \$16,888,367.53, established in the *October 17 Order*, not be enforced, the Stay Motion filed by Mountain Solutions IS GRANTED. The Stay Motion IS DENIED in all other respects.

³ *Id.*, 16 FCC Rcd at 18,546-47. A comprehensive account of the administrative and judicial history preceding the *October 17 Order* is provided in the order's background section. *Id.*, 16 FCC Rcd at 18,542-44.

⁴ Mountain Solutions Ltd., Inc. v. FCC, No. 01-1445 (D.C. Cir. Oct. 10, 2001).

⁵ Stay Order at i, 1-2.

⁶ Mountain Solutions claimed that (1) it is likely to prevail on the merits of its pending court appeal; (2) it will suffer irreparable harm absent a stay; (3) other interested parties will not be harmed if a stay is granted; and (4) the public interest favors grant of a stay. Stay Motion at ii, 6-17.

⁷ See First Extension to Standstill Agreement (January 4, 2001).

⁸ See 31 C.F.R. § 285.12(c) and (d).

⁹ Thus, for the duration of this Order, we will not apply the other funds that Mountain Solutions has on deposit with the Commission for Auction No. 10 toward the outstanding debt of \$16,888,367.53.

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IT IS FURTHER ORDERED THAT, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 155(c)(1), 303(r), and 309(j), this stay will expire without further action by the Commission upon final disposition of the pending appeal.¹⁰

This action is taken pursuant to authority delegated by Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Margaret Wiener, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

¹⁰ Mountain Solutions Ltd., Inc. v. FCC, No. 01-1445 (D.C. Cir. Oct. 10, 2001).

Messrs. Kurtis and Blask
March 15, 2002

cc: VIA CERTIFIED MAIL

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